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Product Liability Law Symposium: Introduction

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INTRODUCTION

The Honorable John C. Eldridge†

In this symposium, the University of Baltimore Law Review examines a field that in recent years has undergone significant advancement and change. Increasingly, the courts and the legislatures have turned their attention to the area of product liability, examining the rights and liabilities of consumers and business. Even today, many issues in this area of the law remain unsettled, awaiting both formulation and resolution. Toward such end, this symposium makes a welcome and valuable contribution.

In the past year the Court of Appeals of Maryland has dealt with product liability issues in four major cases. In two opinions, *Frericks v. General Motors Corp.*¹ and *Volkswagen of America, Inc. v. Young*,² the court considered the matter of liability for the alleged defective design of an automobile. The opinions hold that the manufacturer has a duty to use reasonable care in designing cars to reduce "secondary impact" injuries—those injuries that result not from the primary collision but from the driver's or passenger's consequent impact with a part of the vehicle or with some other object.

Giant Food, Inc. v. Washington Coca-Cola Bottling Co.,³ involved a suit against both the bottler and retailer for injuries resulting from an exploding bottle. The court refused to adopt a rule that would permit "the plaintiff to make out a *prima facie* case of *res ipsa loquitur* against two defendants by showing merely that he has been injured by the negligence of one or the other" unless "their liability was joint or . . . they were in joint or exclusive control of the injury producing factor; or that the wrongdoer, among several possible, has not been identified."⁴ However, the court held that the doctrine of *res ipsa loquitur* may properly be invoked against the retailer alone upon a showing of a greater likelihood that his negligence caused the injury than some other factor.⁵ *Giant Food, Inc.* also considered the issue of whether, in the context of a self-service supermarket, an implied warranty of merchantability for goods may arise before payment for the items is actually made. Answering in the affirmative, the opinion reasoned that an implied warranty arises in a contract for sale, and that such a contract

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1. 274 Md. 288, 336 A.2d 118 (1975).

2. 272 Md. 201, 321 A.2d 737 (1974).

3. 273 Md. 592, 332 A.2d 1 (1975).

4. *Id.* at 600-02, 332 A.2d at 6-7.

5. *Id.* at 599, 332 A.2d at 5.

arises when the shopper removes the goods from the shelves, thus manifesting an intent to accept the retailer's offer to sell them.⁶

Finally, in *Moran v. Faberge*,⁷ the court held that liability could be imposed on a manufacturer for the failure to warn against dangerous conditions that might result when its product comes into contact with elements present in an environment in which it can reasonably be foreseen the product would be used. The exact manner of the accident need not be completely foreseeable, as long as it is within the "general field of danger"⁸ against which the manufacturer should have warned.

As these recent Maryland cases suggest, much of the modern product liability is old law in a new hat. For example, in *Volkswagen of America, Inc. v. Young*, " 'traditional rules of negligence' [led] to the conclusion that an automobile manufacturer is liable for a defect in design which the manufacturer could have reasonably foreseen would cause or enhance injuries on impact, which is not patent or obvious to the user, and which in fact leads to or enhances the injuries in an automobile collision."⁹ Similarly, in *Moran v. Faberge*, the court noted that "a manufacturer's duty to produce a safe product, with appropriate warnings and instructions when necessary, is no different from the responsibility each of us bears to exercise due care to avoid unreasonable risks of harm to others."¹⁰

Indeed, even strict liability in tort, which has not yet been specifically embraced or rejected in Maryland, was known to early common law. "[T]he early law of torts was not concerned primarily with the moral responsibility, or 'fault' of the wrongdoer. . . . Originally a man who hurt another by pure accident . . . was required to make good the damage inflicted."¹¹ Early tort law, however, was aimed at satisfying the plaintiffs so they would not breach the peace.¹² Modern concepts of "liability without fault" are more concerned with the distribution of loss.¹³

Nevertheless, while much of the law of product liability remains within a traditional framework, the remedies offered to those injured by "defective" or "dangerous" products have been increased. For example, the requirement of privity has largely been abolished in both negligence and breach of warranty actions. In the classic case of *MacPherson v. Buick Motors Co.*,¹⁴ the duty owed by the manufac-

6. *Id.* at 602-07, 332 A.2d at 7-9.

7. 273 Md. 538, 322 A.2d 11 (1975).

8. *Id.* at 551, 332 A.2d at 19.

9. 272 Md. at 216, 321 A.2d at 745.

10. 273 Md. at 543, 332 A.2d at 15.

11. W. PROSSER, *THE LAW OF TORTS*, § 75, 492 (4th ed. 1971).

12. *Id.*

13. See *Greenman v. Yuba Power Prods., Inc.*, 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962).

14. 217 N.Y. 328, 111 N.E. 1050 (1916).

turer was extended beyond the immediate purchaser to those foreseeably endangered by the result of the manufacturer's negligence. In Maryland, warranty remedies are available to the buyer, his family or household, guests in his home, or "any other ultimate consumer or user of the goods or person affected thereby if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty."¹⁵ The Maryland Legislature has also rendered unenforceable any language used by a seller of consumer goods to exclude or modify the implied warranties of merchantability and fitness.¹⁶

Because of the breadth of the topic, this symposium on product liability can only deal with some of the issues involved. Nevertheless, the practicing attorney is offered an excellent sketch of the law of product liability, its past foundations, present development and future direction. Additionally, this issue of the University of Baltimore Law Review provides a valuable tool for the investigation, preparation and trial of product liability litigation, as well as an in-depth analysis of several of the more complex areas.

Liability for enhanced injury is the subject of the first article, by Edward S. Digges, Jr. Mr. Digges examines this concept, dubbed the "crashworthiness" test in automobile products litigation, as applied to negligence actions and warranty actions. The author examines also the line to be drawn between "crashworthy" cars—those reasonably designed to avoid generating further injury, and "crashproof" cars—those capable of protecting the occupant from all physical effects of the collision. Additionally, as Mr. Digges notes, the concept of "enhanced injury" is confined neither to design defects nor automotive products, and may well have important ramifications in other areas of product liability law.

Regardless of the theory of recovery advanced in a product liability case, statute of limitations problems may arise. A valuable article by Francis B. Burch, Jr. discusses this area of concern. Mr. Burch analyzes the limitations periods applicable to the different recovery theories, as well as several other related and difficult concepts, such as when a cause of action accrues, and what may toll the running of the statute.

Another important article compares Maryland's warranty law with the strict liability position as set out in Section 402A of the Restatement (Second) of Torts.¹⁷ The authors, Martin H. Freeman and Delverne A. Dressel, consider the question of whether strict liability in tort is superfluous in Maryland because of this state's breach of warranty remedies or whether the concept of strict liability, if adopted, would increase the remedies available to those injured by products.

15. MD. ANN. CODE, Comm. L. Art., § 2-318 (1975).

16. *Id.* § 2-316.1(2).

17. RESTATEMENT (SECOND) OF TORTS, § 402A (1965).

One extremely vital concern of product liability attorneys involves the proof necessary to establish that a product is defective or dangerous. Manufacturers are not required to market "accident-proof" or "injury-proof" products.¹⁸ As noted in the article by Robert E. Powell and M. King Hill, Jr., the central theme of any product liability case, whether grounded in negligence, warranty or strict liability, is that the plaintiff was injured by a product which was in some way defective or unreasonably dangerous. In their article, Messrs. Powell and Hill examine the various types of evidence that should be collected by the trial attorney, and the methods by which to prove the existence of a defect or dangerous condition.

Finally, close attention should be given to the proposed pattern jury instructions on product liability that have been recommended by the Section of Judicial Administration's Committee on Pattern Jury Instructions of the Maryland State Bar Association. These instructions can be of major assistance in future product liability cases, and should be carefully reviewed. Any suggestions for changes may be submitted to the designated committee members.

As this symposium demonstrates, product liability law is today a particularly dynamic concept. The articles in this symposium will make a valuable contribution to the law's development.

18. See *Volkswagen of America, Inc. v. Young*, 272 Md. 201, 217, 321 A.2d 737, 746 (1974).